

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

NAJIY WILLIAMS,
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Movant, :
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:
Criminal No. 5:17-cr-00024-MTT-CHW-1
:
v. :
:
Civil No. 5:23-cv-00140-MTT-CHW
:
UNITED STATES OF AMERICA, :
:
:
Respondent. :
:
:

REPORT AND RECOMMENDATION

Before the Court is a motion to vacate, set aside or correct sentence filed by Movant Najiy Williams pursuant to 28 U.S.C. § 2255. (Doc. 224). In the motion, Movant enumerates four grounds for relief which all fail on the merits. It is **RECOMMENDED** that Movant's Section 2255 motion be **DENIED**.

FACTUAL BACKGROUND

Movant in this case seeks to vacate, set aside, or correct the sentence arising from his plea of guilty to one count of inducing another to travel to engage in criminal sexual activity. Movant's Plea Agreement (Doc. 106), stipulated to the following facts.

Beginning in late 2015, and running through at least February 2017, Movant placed online advertisements targeting adult women willing to model, dance, or act in pornographic films. At least six women responded to these advertisements: J.A., N.J., B.H., B.S.S., I.F., and T.M. A seventh woman, T.W., encountered Movant by way of her own prostitution advertisements. Movant used financial pressure to coerce these women into performing commercial sex acts, primarily for his own gain.

For example, N.J. was transported from Milledgeville, Georgia, to Charleston, South Carolina, where she was instructed to “stay in her room and men would come and she was to do whatever sexual activity they requested.” (Plea Agreement, Doc. 106, p. 14–15). N.J. “was never in possession of money and felt stuck.” (*Id.*, p. 15). When N.J. refused to perform further sex acts, Movant “threw N.J. and her belongings out with no resources to get back home to Georgia.” (*Id.*)

T.W., a prostitute, was “robbed by a customer,” a man named Vasser, who took T.W.’s “phone and wallet with her money and identification.” (*Id.*, p. 16). T.W. later recontacted Vasser, and Vasser then transported T.W. from South Carolina to Georgia, where she encountered Movant and performed “approximately 400 to over 500 commercial sexual acts,” primarily for Movant’s gain. (*Id.*, p. 17) T.W. sometimes traveled to perform sex acts, and on these occasions, “T.W.’s minor son stayed with” Movant. (*Id.*)

Movant also arranged or paid for bus tickets to transport J.A. from Ohio to Georgia, B.S.S. from Florida to Georgia, and T.M. and I.F. from Virginia to Georgia. Movant then housed these women in hotels, provided them with cell phones, and give them instructions on “how to answer calls and what the rates were.” (*Id.*, p. 19).

B.H. responded, in February 2017, to an advertisement soliciting “a female ok with doing escort work.” (*Id.*, p. 18). Like the other women previously described, Movant paid for B.H.’s travel from Virginia to Georgia, provided her with a cell phone, and then housed her in a hotel where she proceeded to perform “between 50 and 100 ... commercial sex acts.” (*Id.*). B.H. “did not feel that she was free to leave,” and when she did leave the hotel, she felt she was “under constant supervision.” (*Id.*, p. 19).

PROCEDURAL HISTORY

Based on the foregoing conduct, a grand jury issued a twelve-count indictment charging Movant and others with conspiracy to commit sex trafficking in violation of 18 U.S.C. § 1594(c),

sex trafficking in violation of 18 U.S.C. § 1591(a)(1) and (b)(1), inducement to travel for the purpose of engaging in criminal sexual activity in violation of 18 U.S.C. § 2422(a), and transportation for the purpose of illegal sexual activity in violation of 18 U.S.C. § 2421(a). (Doc. 1). A superseding indictment, delivered in August 2017, merged counts eleven and twelve. (Doc. 67).

In June 2018, Movant and the Government reached an arrangement for Movant to plead guilty only to count seven, which charged Movant with sex trafficking. The base sentencing range for that offense was fifteen years to life imprisonment, but pursuant to Fed. R. Crim. P. 11(c)(1)(C), the parties agreed to a binding plea deal that would fix Movant's sentence at the bottom of that range, meaning fifteen years or 180 months, less any reduction for Movant's possible substantial assistance under 18 U.S.C. § 3553(e). (Doc. 96, p. 3).

The Court noted that when Movant's criminal history and the specific offense characteristics were factored into Movant's sentencing range, that range was at least 235 to 293 months of imprisonment. (Doc. 185, p. 4). The Court therefore noted that Movant's plea deal proposed "a substantial reduction to get to a sentence of 180 months," and that there was no apparent factual "basis for going below the guidelines substantially before I could accept a binding Plea Agreement" mandating a sentence of 180 months. (Doc. 185, p. 5). The Court therefore rejected that aspect of the initial plea deal.

The parties then returned with a new arrangement pursuant to which Movant agreed to plead guilty only to count nine, which charged Movant with the lesser offense of inducement to travel to engage in criminal sexual activity. The guideline sentencing range for that offense was 51 to 63 months, (Sentencing Hearing, Doc. 182, p. 8), but Movant's new plea agreement made a

joint, “non-binding recommendation of a sentence of at least 180 months” of imprisonment. (Doc. 106, p. 21). The Court acknowledged the unusual nature of this deal:

[T]his is a bit of an unusual situation. I mean, you’ve got a defendant who, if he was knowledgeable generally of what his exposure under the guidelines was, he would know that his exposure was 51 to 63 months, but yet he still was agreeing to be sentenced to 15 years.

* * *

Well, everything you say is technically correct, without a doubt. But I dare say that there’s not a lawyer who practices in federal court who can think of a similar situation; that is, where a defendant has pled guilty to an offense that would subject him to — under the guidelines, to a maximum of 63 months, but yet agrees to be sentenced to 15 years. That’s a bit unusual.

(Doc. 182, pp. 12–13)

Nevertheless, after questioning Movant at length regarding his acceptance of the new plea deal, the Court accepted Movant’s plea, adjudged Movant guilty of count nine, and sentenced Movant to serve a 174-month term of imprisonment, which term incorporated a six-month reduction for Movant’s substantial assistance. (Doc. 182, p. 64–65; Doc. 158, p. 2). The remaining charges against Movant were dismissed, and Movant did not file a direct appeal.

Movant then filed a *pro se* Section 2255 motion (Doc. 176), which enumerated seven overlapping grounds for relief, most of which advanced claims of ineffective assistance of counsel. Movant’s grounds were construed as:

1. Counsel gave incorrect guidance as to sentencing range to which Movant was exposed by his guilty plea;
2. Counsel’s threats to abandon Movant, and Counsel’s instructions for Movant to lie to the Court, resulted in an unknowing and involuntary guilty plea, and in the denial of due process;

3. Counsel did not properly prepare or investigate in relation to (a) the alleged number of victims, (c) potential exculpatory witnesses, and (d) the so-called buyer/seller defense;
4. Counsel failed to file an appeal notwithstanding Movant's instructions that counsel do so;
5. Counsel labored under a conflict of interest arising from the nature of his fee;
6. Counsel failed to review with Movant his presentence investigation report and other discovery, resulting in a sentence that was "based on false information" (Doc. 176, p. 15); and
7. Counsel's cumulative errors warrant relief.

A recommendation to deny the motion was entered except as to ground four. (Doc. 192). 192). Counsel was appointed and an evidentiary hearing was scheduled to address ground four. (Doc. 191). Following the evidentiary hearing, a supplemental recommendation was made to grant relief on ground four so that Movant would be able to file an out-of-time appeal. (Doc. 198). The Court adopted the supplemental recommendation and granted Movant's initial Section 2255 motion on ground four and vacated and reimposed sentence to allow Movant to file an out-of-time appeal. (Docs. 202-205). The Court rejected the first recommendation (Doc. 192) and dismissed without prejudice the remaining grounds of Movant's initial Section 2255 motion. (Doc. 198). The Court appointed counsel for purposes of appeal. (Doc. 206).

On appeal, Movant argued that plea counsel was ineffective for failing to investigate and present mitigating evidence at sentencing about Movant's upbringing, challenged the court's restitution calculation and reduction award for Movant's substantial assistance, and argued that cumulative errors warranted reversal. *United States v. Williams*, 2022 WL 278932 (11th Cir. 2022). The Eleventh Circuit Court of Appeals chose not to address Movant's ineffective assistance

of counsel ground because it would be best suited to a Section 2255 motion, rejected the remaining arguments, and affirmed Movant's sentence. *Id.*

With assistance of his appellate counsel,¹ Movant filed the present Section 2255 motion (Doc. 224). The Government responded as directed and the motion is now ripe for review. The Court's decision to grant Movant's previous Section 2255 motion to permit him to appeal out-of-time placed Movant in a position as if he had originally appealed. Therefore, the present Section 2255 motion is not considered to be an impermissible second or second petition. *See McIver v. United States*, 307 F.3d 1327, 1330 (11th Cir. 2002) (holding that a "successful motion to permit a direct appeal does not render a subsequent collateral challenge 'second or successive' under [the] AEDPA.")

LEGAL STANDARDS AND CLAIMS FOR RELIEF

Following his appeal, Movant filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. (Doc. 224). Section 2255 allows persons in custody pursuant to the sentence of a federal court to seek release on the basis that "the sentence was imposed in violation of the Constitution or the laws of the United States." 28 U.S.C. § 2255(a). Section 2255 is not a substitute for appeal. *Lynn v. United States*, 365 F.3d 1225, 1232 (11th Cir. 2004). Therefore, claims not raised on appeal generally are procedurally defaulted, meaning they "may not be raised on collateral review unless the petitioner shows cause and prejudice." *Massaro v. United States*, 538 U.S. 500, 504 (2003). Claims of ineffective assistance of counsel, however, are exempted from the procedural default rule. *Massaro*, 538 U.S. at 504.

¹ Court-appointed appellate counsel filed Movant's Section 2255 motion prior to being officially appointed to remain counsel for purposes of the motion. (Docs. 224, 225). Counsel withdrew in December 2023 after being appointed to serve as a superior court judge. (Docs. 232, 233). Movant is now proceeding *pro se*.

In his Section 2255 motion, Movant raises the following claims based upon his plea counsel's ineffective assistance of counsel:

1. Plea counsel was ineffective for failing to properly investigate and present evidence of the impact of Movant's upbringing as a mitigating factor at his sentencing (*Id.*, p. 4);
2. Plea counsel was ineffective in giving incorrect guidance as to the sentence to which Movant would be exposed by his guilty plea (*Id.*, p. 5);
3. Plea counsel's threats to abandon Movant and instruction of Movant to lie to the Court resulted in an unknowing and involuntary guilty plea, and in the denial of due process (*Id.*, p. 7); and
4. The prejudicial impact of the cumulative errors in Movant's case requires that the Court grant relief. (*Id.*, p. 8).

The Supreme Court's decision in *Strickland v. Washington*, 466 U.S. 668 (1984), governs the review of claims of ineffective assistance of counsel. To obtain relief under *Strickland*, a Section 2255 movant must demonstrate both (1) deficient performance, meaning "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment," and (2) prejudice, meaning "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 687, 694. Regarding performance, judicial review of attorney conduct is "highly deferential" given the "wide range of reasonable professional assistance," along with the "distorting effects of hindsight." *Strickland*, 466 U.S. at 689. Regarding prejudice, in the guilty plea context, prejudice means "there is a reasonable probability that, but for counsel's errors,

[Movant] would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Plea negotiations qualify as a “critical stage” of the criminal proceedings to which the Sixth Amendment right to effective assistance of counsel applies. *Missouri v. Frye*, 566 U.S. 134, 141 (2012) (quoting *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010)). Under the first prong of the Strickland ineffective assistance of counsel analysis, “counsel owes a lesser duty to a client who pleads guilty than to one who goes to trial, although counsel still must ‘make an independent examination of the facts and circumstances and offer an informed opinion to the accused as to the best course to follow.’” *Cruz v. United States*, 188 F. App’x 908, 913 (11th Cir. 2006) (quoting *Agan v. Singletary*, 12 F.3d 1012, 1017–18 (11th Cir. 1994)). To satisfy the second prong of the Strickland test and show prejudice to his case, Movant must show “not only that counsel committed professional error, but also a reasonable probability that, but for counsel’s errors, [he] would not have pleaded guilty and would have insisted on going to trial.” *Cruz*, 188 F. App’x at 913 (citing *United States v. Pease*, 240 F.3d 938, 941 (11th Cir. 2001)). To be entitled to collateral relief under such circumstances, Movant “must ‘prove serious derelictions on the part of counsel sufficient to show that his plea was not, after all, a knowing and intelligent act.’” *Downs-Morgan v. United States*, 765 F.2d 1534, 1539 (11th Cir. 1985) (quoting *McMann*, 397 U.S. at 774).

ANALYSIS

As explained below, Movant has not demonstrated that Section 2255 relief is warranted for the following reasons.

(1) The record shows that Movant’s background was addressed at sentencing.

Movant first argues that his plea counsel was ineffective for failing to properly investigate and present evidence of the impact of Movant’s upbringing at sentencing. (Doc. 224, p. 4). Movant

suggests that his background and effects of growing up in a cult should have been presented in mitigation at sentencing, but that his counsel failed to do so. (*Id.*) The record directly contradicts this argument.

As noted in his pre-sentencing report (PSR), Movant explained that he grew up in Malachi York's pseudo-religious cult. (Doc. 141, ¶ 65; Doc. 224, p. 4). Movant correctly surmises that "Malaki [sic] York is one of the most infamous figures ever to appear in this Court..." (Doc. 224, p. 4). Given that notoriety and Movant's PSR, Movant cannot reasonably suggest that the Court was unaware of the nature and far-reaching effects of York's cult, including the criminal acts to which Movant was subjected to as a child. Moreover, counsel *did* address this portion of Movant's history at the sentencing hearing. In arguing for a lesser sentence and presenting several mitigating factors, plea counsel explained, "Mr. Williams was born into a community called the [Nuwaubian] Mosque. That gave him certain -- a certain type of upbringing, which I think unfortunately didn't result in some of the best learned behaviors for him." (Doc. 182, p. 54). The record plainly shows that the Court was made aware of Movant's upbringing, beyond the notoriety of York's extensive criminal activities as the Nuwaubian leader.

To the extent that Movant would argue that plea counsel did not adequately highlight the effects of upbringing at sentencing, Movant cannot show a "reasonable probability of a different outcome" at sentencing based on any further argument plea counsel might have made. Moreover, as explained below, Movant received a sentence slightly below the maximum sentence contemplated by his plea agreement. Thus, Movant cannot show under the circumstances that he "would not have pleaded guilty and would have insisted on going to trial," but for counsel's failure to argue additional facts of his upbringing. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Accordingly, this ground fails on both *Strickland*'s performance prong, as well as its prejudice prong.

(2) Counsel's alleged advice regarding Movant's sentence exposure.

Movant next argues that his counsel was ineffective for failing to accurately to advise Movant of the risk of sentencing exposure following Movant's entry of a guilty plea. (Doc. 224, p. 5-6). He specifically notes that counsel told Movant that he would not receive longer than a five year sentence. (*Id.*) This argument by Movant is meritless in light of statements made by Movant in open court on two occasions, to which a weighty presumption of truth attaches. *See, e.g., United States v. Medlock*, 12 F.3d 185, 187 (11th Cir. 1994).

First, at Movant's change of plea hearing, the Government recited the terms of Movant's plea agreement which included "a nonbinding recommendation of a sentence of at least 180 months, less any reduction for ... substantial assistance." (Doc. 181, p. 21). The Court questioned Movant under oath regarding his understanding of the plea agreement's terms, and Movant acknowledged his understanding. (*Id.*, p. 22).

Second, at Movant's sentencing hearing, the Court repeatedly questioned Movant under oath as to his understanding and acceptance of the duration of the sentence anticipated and recommended by Movant's plea agreement:

The Court: So under the presentence report for the count that you pled guilty to, we now know that your guideline range is 51 to 63 months. But yet in your Plea Agreement you agreed, as was discussed in the presentence report, that you stipulated and agreed to make a non-binding recommendation of a sentence of at least 180 months less any reduction for your substantial assistance. That's the 5K motion. And that was in the second Plea Agreement. Do you recall that?

The Defendant: Yes, I do.

The Court: So, is this what you want? Is that what you understood you were agreeing to when you entered into this Plea Agreement? That you were agreeing

that I would sentence you to at least 180 months with some possible reduction for your 5K motion?

The Defendant: Yes, I did.

* * *

The Court: I just want to be absolutely certain that this is what you want to do. That is, you want to proceed with this Plea Agreement, even though if I follow the Plea Agreement you will be sentenced to at least 180 months less a possible reduction for substantial assistance. Is that what you want to do?

The Defendant: Yes.

(Doc. 182, pp. 17–20)

The Court: Mr. Williams ... I want to ask you one last time, before I accept your Plea Agreement. The question again is this: Did you, when you made an agreement with the government, knowingly and voluntarily agree to a sentence of at least 180 months, less any reduction for your substantial assistance as would be determined by me?

The Defendant: Yes, Your Honor.

(Doc. 182, p. 64)

Based on these exchanges, even if Movant's counsel performed deficiently by failing accurately to advise Movant of his sentencing exposure, no prejudice ensued because Movant nonetheless clearly and expressly understood that risk. Movant unequivocally manifested his understanding that he was likely to receive precisely the sentence that eventually received. As a result, Movant cannot demonstrate that prejudice ensued from any possible deficient performance by counsel, and accordingly, Movant cannot prevail on his claim of ineffective assistance of counsel.

While Movant's guilty plea and sentencing records conclusively show that plea counsel was not ineffective and that Movant understood his sentence exposure, Movant's position that

counsel gave incorrect guidance is further undermined by his own testimony. During cross-examination at the evidentiary hearing regarding his initial Section 2255 motion, Movant reiterated his understanding about his decision to plead guilty and the recommended sentence he agreed to:

Ms. Booker: Do you recall us negotiating, and you agreeing to, in your plea agreement, that you would be sentenced to 180 months?

Movant: Talking about in court that day?

Ms. Booker: Correct.

Movant: At sentencing. Yes.

Ms. Booker: Yes. And you also signed the plea agreement prior to that day.

Do you recall that?

Movant: Yes.

Ms. Booker: Where it spelled it out that we are going to make a recommendation of 180 months?

Movant: Yes.

Ms. Booker: And you ended up getting the 174 months, correct?

Movant: Yes.

Ms. Booker: But you were upset even though you agreed to 180 months?

Movant: Yes.

Ms. Booker: Why is that?

Movant: Because I was told that the Court would usually stay within the recommendations even after that.

Ms. Booker: The Court also noted and made sure that you understood what the guideline range was which ended up being 51 to 63 months; is that correct?

Movant: Say that one more time.

Ms. Booker: The guideline range. The Court mentioned that it was 51 to 63 months during our sentencing hearing; is that correct?

Movant: Yes.

Ms. Booker: And the Court also discussed that it was unusual for a defendant to agree to 180 months when the guideline range was much less than that; is that correct?

Movant: Yes.

Ms. Booker: And yet you agreed and went forward anyway; is that correct?

Movant: Yes.

Ms. Booker: The Court made sure that you understood this. And you understood this at the time that the 180 months was a possibility and that's what we were agreeing to?

Movant: Yes, with the knowledge that if it went above the recommendation that I would be able to file an appeal.

Ms. Booker: But you agreed to the 180 months?

Movant: Yes.

Ms. Booker: And your plan was if you got the 180 months you were going to file an appeal?

Movant: That's the idea I had. That's what I was told by my lawyer. That if it went above the guidelines that we would be able to appeal it.

Ms. Booker: So you agreed to 180 months and if you got what you agreed to you were going to appeal?

Movant: Yes.

Ms. Booker: Do you recall that you were facing life imprisonment if we went to trial?

Movant: Yes.

Ms. Booker: Okay. Were you aware that we had some of the alleged victims of this case prepared to testify against you?

Movant: Yes.

Ms. Booker: Mr. Abt went over that with you?

Movant: Yes.

Ms. Booker: And you went over all the evidence against you?

Movant: Yes.

Ms. Booker: And you decided it was in your best interest to plea as opposed to go to trial; is that correct?

Movant: According to the advice of my lawyer, yes.

Ms. Booker: Well, your lawyer could give you advice but you have to ultimately make the decision on whether or not you enter a plea or decide to go to trial.

Do you understand that?

Movant: Yes.

Ms. Booker: And you decided that you wanted to take the plea, correct?

Movant: Yes.

(Doc. 215, p. 46-49).

(3) Guilty Plea Pressure

As his third ground for relief, incorporating background from his previous Section 2255 motion (Doc. 176), Movant argues that his counsel pressured him into pleading guilty and into lying to the Court at his change of plea hearing and his sentencing hearing. (Doc. 224, p. 7). According to Movant, this pressure was accompanied by counsel's threats of abandonment, which would leave Movant to represent himself. (*Id.*) Movant argues that his plea was therefore unknowing and involuntary, which denied him due process. (*Id.*)

Insofar as Movant sought to raise an independent due process claim on the basis that his guilty plea allegedly was not knowing and voluntary, that argument is procedurally defaulted based on Movant's failure to raise it on appeal. *See Bousley v. United States*, 523 U.S. 614, 621 (1998) ("the concern with finality served by the limitation on collateral attack has special force with respect to convictions based on guilty pleas"); *see also Williams*, 2022 WL 278932 (demonstrating that Movant failed to raise a due process argument on appeal).

With regard to his contention that his counsel pressured him to lie to the Court regarding his acceptance of guilt, and hence to plead guilty, Movant cannot prevail on a claim of ineffective assistance of counsel for two reasons. First, Movant raised no objection during proceedings before this Court as to any alleged conflict of interest on the part of counsel. *Cf. Cuyler v. Sullivan*, 446

U.S. 335, 348 (1980) (“In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer’s performance”). Instead, Movant’s sworn statements, and the Court’s findings, expressly indicate that Movant’s guilty plea was knowing and voluntary, rather than the product of impermissible pressure by counsel:

The Court: Are you pleading guilty voluntarily and of your own free will because you are guilty of the crime you’ve been charged with?

The Defendant: Yes, Your Honor.

(Doc. 181, p. 5)

* * *

The Court: It is the finding of the Court in the Case of United States versus Naji Williams that Mr. Williams is ... aware of the nature of the charge and the consequences of the plea, and his plea is a knowing and voluntary plea ... The plea is therefore accepted and he is adjudicated guilty of that offense.

(Doc. 181, pp. 25–26)

Based on these selections from the record, along with the lack of any indication elsewhere in the record suggesting a breach in the duty of loyalty on the part of Movant’s counsel, there is no basis for the Court to find an actual, as opposed to a merely speculative, conflict of interest by counsel in relation to Movant’s guilty plea. *See Reynolds v. Chapman*, 253 F.3d 1337, 1343–43 (11th Cir. 2001).

Second, even if Movant’s counsel had labored under an actual conflict of interest, Movant cannot demonstrate prejudice or an adverse effect for the simple reason that Movant’s plea bargain was an exceedingly good deal under the circumstances. *Reynolds*, 253 F.3d at 1343. By pleading guilty to a single count, Movant achieved the dismissal of nine other counts against him. Several

of those other counts — those charging Movant with sex trafficking — each carried a higher penalty range than the single count to which Movant pleaded guilty. Additionally, the record indicates that if Movant had proceeded to trial, he would have faced damning testimony from up to seven victim-witnesses.

Moreover, the record shows that counsel performed in a highly effective manner after the Court rejected an initial plea arrangement, which proposed a binding 180-month sentence for the count-seven charge of sex trafficking, as too lenient — that is, as too great a downward departure from the contemplated minimum sentence of at least 235 to 293 months of imprisonment. *See* (Doc. 185, p. 4). Following this rejection, counsel conferred with the Government and resuscitated a substantially similar arrangement that called for Movant to plead guilty to a lesser offense, inducement to travel for criminal sexual activity, while agreeing to an upward departure to achieve the same 180-month sentence previously agreed upon. The record, in other words, indicates that counsel's performance was anything but ineffective.

In addition to the plea and sentencing records in this case, counsel also confirmed this history and strategy at the evidentiary hearing about Movant's original Section 2255 motion:

Mr. Abt: I remember -- let's see, now I do remember a lengthy discussion on the record with the Court about why we were agreeing to a sentence above the guidelines. And the reason was we negotiated for pleaing [sic] to dismissing many of the charges against Mr. Williams and pleaing [sic] to a lesser charge that would have a very low guideline range. And we did that in exchange for a plea of -- you know, I don't know if it was exactly 180 months that he was sentenced to. I don't think it was. But somewhere in that area, which is well above the guideline range.

And the Court went into a long discussion of why we were doing that in order to understand that the reason we were doing that was because the government had agreed to dismiss many, many counts.

And had the government proceeded on all of those counts or had Mr. Williams gone to trial and lost he would have faced a life sentence.

(Doc. 215, p. 19) (emphasis added).

Based on the foregoing, Movant cannot prevail on his claim of ineffective assistance of counsel relating to the assistance given to him during his guilty plea such that his guilty plea was not knowing and voluntary.

(4) Cumulative Error

Movant’s final ground for relief raises a claim of cumulative error citing the “totality of the circumstances” of his plea and sentencing. Pursuant to the cumulative error doctrine,² “non-reversible errors (i.e., plain errors failing to necessitate reversal and harmless errors) can yield a denial of the constitutional right to a fair trial, which calls for reversal.” *Morris v. Sec’y, Dept. of Corrs.*, 677 F.3d 1117, 1132 (11th Cir. 2012). In reviewing claims of cumulative error, courts first assess the validity of individual claims, and they then examine any perceived errors in the aggregate to determine whether the Movant was afforded a fundamentally fair trial. *Id.*

For the reasons previously articulated, Movant’s claims of ineffective assistance of counsel pertaining to the course of pretrial, plea, and sentencing proceedings all are meritless. Accordingly, because Movant has failed to show any defect in the Court’s rulings and judgment based on counsel’s conduct, Movant’s cumulative error argument necessarily fails. *See Morris*, 677 F.3d at 1132 (“where there is no error in any of the trial court’s rulings, the argument that [there is] cumulative trial error ... is without merit”) (internal punctuation omitted); *see also, Williams*, 2022

² As the Government notes, it is an open question whether a cumulative error argument can be raised in the context of a claim of ineffective assistance of counsel. (Doc. 227, p. 20-21). *See, e.g., Forrest v. Fla. Dept. of Corrs.*, 342 F. App’x 560, 564–65 (11th Cir. 2009) (“there is generally no basis for finding a Sixth Amendment violation unless the accused can show how specific errors of counsel undermined the reliability of the finding of guilt”) (quoting from *United States v. Chronic*, 466 U.S. 648, 659 n.26 (1984)). The argument is nonetheless addressed herein in an abundance of caution.

WL 278932, *3 (“Williams’s argument about cumulative error fails. ‘Where there is no error or only a single error, there can be no cumulative error.’”) (citations omitted). Therefore, Movant is not entitled to Section 2255 relief on his cumulative error argument.

EVIDENTIARY HEARING

Movant makes no allegations that, if proved true, would entitle him to relief. While records from the evidentiary hearing from Movant’s previous Section 2255 motion have been cited for additional support and emphasis, no evidentiary hearing is needed to resolve Movant’s Section 2255 motion. Rather, for reasons discussed above, “the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. §2255(b). *See also Rosin v. United States*, 786 F.3d 873, 877–78 (11th Cir. 2015) (“an evidentiary hearing is unnecessary when the petitioner’s allegations are ‘affirmatively contradicted by the record’”).

CONCLUSION

Based on the foregoing, it is **RECOMMENDED** that the Court **DENY** Movant’s Section 2255 motion. (Doc. 224). Additionally, because Movant has not made a substantial showing of the denial of a constitutional right, it is further **RECOMMENDED** that the Court deny a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2); *see also Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, **WITHIN FOURTEEN (14) DAYS** after being served with a copy thereof. Any objection is limited in length to **TWENTY (20) PAGES**. *See* M.D. Ga. L.R. 7.4. The District Judge shall make a de novo determination of

those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 25th day of March, 2025.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge